

**BEFORE
THE PUBLIC SERVICE COMMISSION
OF SOUTH CAROLINA
DOCKET NO. 2019-390-E**

IN RE: Ganymede Solar, LLC,)	
)	
Petitioner,)	GANYMEDE SOLAR, LLC’S
)	REPLY
Dominion Energy South Carolina,)	TO RESPONSE IN OPPOSITION
Incorporated,)	TO MOTION
Respondent.)	

INTRODUCTION

Pursuant to S.C. Code Ann., Regs Section 103-829(A) and other applicable Rules of practice and procedure of the Public Service Commission of South Carolina (hereinafter as, “Commission”), Ganymede Solar, LLC (hereinafter as, the “Project” or “Ganymede”), hereby Replies to Dominion Energy South Carolina, Incorporated (hereinafter as, “DESC”, or “Utility”) Response in Opposition to Motion to Maintain Status Quo. Ganymede also made an Informational filing in this Docket on January 3, 2020, and that filing is incorporated herein by reference, as if set forth verbatim. Ganymede’s Reply follows.

REPLY

I. Ganymede’s Motion Sets Forth a Basis for Relief.

This Commission’s authority to maintain the status quo between the parties is implicit in S.C. Code Ann., Section 58-27-980, and Ganymede’s Motion clearly states S.C. Code Ann., Section 58-27-980, as a basis for relief. That Section gives this Commission broad supervisory authority, “No contract... shall be exempt from alteration, control, regulation and establishment by the Commission, when in its judgment the public interest so requires...” and “...unless [a Contract, in this case, the Company’s Interconnection Agreement] be subject to **amendment, modification, change** or **annulment** by the Commission....” (Emphasis supplied). This Commission’s authority under S.C. Code Ann., Section 58-27-980, is described as being, “Full Power and Authority”. The South Carolina General Assembly’s grant of broad authority and jurisdiction to this Commission would be meaningless if this Commission did not have

authority to stay the status quo between the parties, in any dispute alleging jurisdiction under S.C. Code Ann., Section 58-27-980. Accordingly, this Commission does have the power to grant a Motion to Maintain Status Quo between these parties, namely, that on the date of Ganymede's filing of its Petition and Motion, which date was December 20, 2019, the milestone 2 ("M2") payment contemplated under the Interconnection Agreement ("IA"), due on December 27, 2019, was not yet due and owing. Ganymede's Motion contains a concise and cogent statement of facts to this Commission and specifically sets forth grounds for the Motion on page "1" thereof.

DESC's curious argument seeking to require Ganymede to provide tangible proof of its case in a Motion, is simply misplaced. DESC further concedes that this Commission can modify certain rights of the parties as to the IA, which is clear under S.C. Code Ann., Section 58-27-980, but then DESC attempts to improperly limit this Commission's exercise of its clear, broad supervisory authority.

Also, DESC's argument that this Commission's recent Order Number 2019-847, on a Variable Integration Charge ("VIC"), makes certain an interim value for the VIC, is no longer viable given this Commission's Directive Order issued on January 3, 2020. With regard to the VIC, that Order specifically states, "Once again, I would emphasize that this is to be an interim, rather than permanent, rate." (emphasis supplied). The word interim is troublesome to a financing entity because of the pricing uncertainty inherent in an interim charge. Furthermore, this Commission has ordered an Integration Study, which may lead to a further change or "true up" of the VIC, but has not established a time frame for that study. The pendency of an Integration Study and a possible "true up" create further uncertainty for a financing entity. Given these facts, DESC's statement that, "...the VIC Order actually quantified (i.e. made certain) an interim value for the VIC..." (See, DESC's Response on page "5") is inaccurate. Pursuant to this Commission's Orders on VIC, the interim VIC will be applied equally in the context of existing PPAs that contain the VIC language and for any PPA signed prospectively that will be subject to the VIC. Therefore, the uncertainty inherent in an interim VIC is the same regardless of whether a project had an existing PPA subject to the VIC or sought to execute a PPA subject to the VIC prospectively.

II. Continuation of the Status Quo is Appropriate.

Contrary to DESC's assertions, continuation of the status quo is appropriate and necessary in this case. DESC first relies on FERC precedent, which it admits does not "bind this Commission", to assert that this Commission should not grant the relief sought by the Project. DESC Response at page "6". But the FERC orders cited by DESC are fact-specific and show that FERC will only approve termination of a project from the queue if doing so would not be "unjust, unreasonable, unduly discriminatory, or preferential," and would be "consistent with the public interest." *Midcontinent Indep. Sys. Operator, Inc.*, 147 FERC ¶ 61,198 (2014) at P 3. This is a fact-specific analysis, and the factors cited by FERC in those cases in support of terminating queue positions – most notably, the prior approval by FERC of queue reforms and stringent tariff standards to address severe problems posed by speculative projects – are not present here. DESC does not acknowledge or distinguish these differences.

Further, contrary to DESC's assertion that the IA does not permit the relief requested, the Ganymede IA contains a provision "12.12", which allows this Commission to hear and to review a unilateral request for modification, when filed. Ganymede has filed a Petition with this Commission requesting modification of the milestone payment schedule, which should now be heard by this Commission. DESC's Response improperly attempts to usurp the authority of this Commission, by asserting that Ganymede's Petition should not be heard by this Commission. In addition to the relief available under the IA, the Project requests that the Commission act pursuant to the broad authority granted to the Commission in S.C. Code Ann., Section 58-27-980. Ganymede also provided appropriate notice to DESC regarding its inability to meet the milestone payment when it filed its Motion to Maintain Status Quo and Petition on December 20, 2019. The relief sought by Ganymede in this proceeding is not contrary to the terms of the IA, and the Project does not request preferential or discriminatory treatment. Rather, it would be appropriate for this Commission to grant the relief sought by the Project to maintain the status quo.

III. Ganymede is Not in Default Under the IA and Has Not Requested Injunctive Relief.

Ganymede is Not in Default.

DESC's statement on page "8" of its Response that Ganymede is in default under the IA is **only true** (i) if DESC is permitted to invade the province of this Commission and its jurisdiction, (ii) if DESC is permitted to ignore Ganymede's timely filing of a Petition seeking this Commission's jurisdiction under S.C. Code Ann., Section 58-27-980, which jurisdiction was accepted by this Commission by its acceptance of Ganymede's filings and this Commission's assignment of Docket 2019-390-E to this dispute, and (iii) if DESC is permitted to ignore Ganymede's timely filing of a Motion to Maintain Status Quo.

Ganymede Does Not Seek Injunctive Relief.

This Commission may ignore DESC's "red herring" argument on injunctive relief, because **nowhere in Ganymede's Petition or Motion** to Maintain Status Quo, does Ganymede seek injunctive relief.

Ganymede does seek a review under S.C. Code Ann., Section 58-27-980, as is set forth in "I" hereinabove. DESC simply ignores this Commission's broad supervisory power to **amend, modify, change** or **annul** the IA between Ganymede and DESC. The existence of S.C. Code Ann., Section 58-27-980 is an inconvenient truth for DESC's attempt to place Ganymede in default and to invade the province of this Commission and leave nothing of substance for this Commission to decide in this Docket.

CONCLUSION

Based on the foregoing, this Commission should deny DESC's request that the Motion be denied.

[Signature Page Follows]

Respectfully Submitted,
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